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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CANEPA DESIGN,

Plaintiff and Respondent,

v.

VERNON D. THIELMAN,

Defendant and Appellant.

H037121

(Santa Cruz County

Super. Ct. No. CV164836)

Defendant Vernon D. Thielman appeals from a judgment awarding plaintiff Canepa Design the balance due on a promissory note. Defendant argues that the trial court erred in refusing to continue the trial date because plaintiff's discovery responses were not delivered in time for defendant to prepare for trial. We conclude that the record is inadequate to show error.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a complaint for breach of promissory note and common counts on August 10, 2009. The complaint attached a promissory note dated July 18, 2003. According to the note, plaintiff loaned defendant \$15,000 three years earlier, in March 2000, at 10 percent interest. The note called for defendant to make payments in installments of \$500 over 36 months, making the final payment due August 1, 2006.

Trial was to the court on April 20, 2011. The trial court found that defendant had signed the note and that the note evidenced an earlier oral loan agreement. Although enforcement of the oral agreement "may have become barred by the statute of limitations

after two years, defendant's act in signing the written note was supported by adequate moral consideration and operated as a waiver of the statute." The statute began to run when the loan was due, August 1, 2006, and since the complaint was filed within four years of that date it was timely. (Code Civ. Proc., § 337.) The court further found that defendant, who had been employed by plaintiff, had not carried his burden to prove that the parties had agreed to apply his overtime pay in satisfaction of the outstanding balance or that the claim was barred by laches or a failure of consideration. The court found that defendant had paid only \$5,000 toward the debt and that principal plus interest still owing was \$26,750. Defendant, who has appeared in propria persona throughout this litigation, filed a timely appeal from judgment.

II. DISCUSSION

Defendant's only argument on appeal is that the trial court erred in failing to continue the April 20, 2011 trial. We review the argument under settled rules. The cardinal rule is that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) If the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court is affirmed. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) The usual rule is that the record before us must contain only that which was before the trial court. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1; see Cal. Rules of Court, rules 8.122, 8.124(g).) Matters not presented to the trial court are not a proper part of the record on appeal and will not be considered by an appellate court. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 711, overruled on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 33-34.)

Defendant has proceeded by way of an appellant's appendix as allowed by California Rules of Court, rule 8.124. We granted plaintiff's motion to strike a significant portion of the 64 page appendix on grounds the material was not presented to

the trial court. Accordingly, the record consists of little more than the complaint, the answer, defendant's ex parte request to continue the February 18, 2011 trial date (which was granted), and exhibits relating to payments on the debt. There is no reporter's transcript or settled statement to shed light on what transpired during the trial. (Cal. Rules of Court, rules 8.130, 8.137.) The only indication that defendant asked for another continuance is defendant's statement to that effect in his brief. The record does not reveal the alleged error. Accordingly, we must affirm.

III. DISPOSITION

The judgment is affirmed.

Premo, Acting P.J.

WE CONCUR:

Mihara, J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.